

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION**

IN RE:

JUDY KAY PHILIP,

Debtor.

**Case No. 05-07218-8-JRL
Chapter 13**

ORDER

This case is before the court on the debtor's motion to avoid the judicial lien on residential real estate. On December 19, 2005, the court conducted a hearing on this matter in Wilmington, North Carolina.

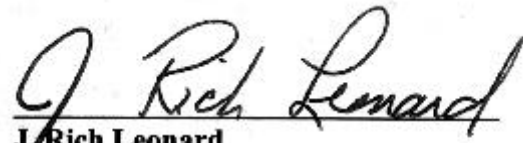
The debtor seeks to avoid a judicial lien in the amount of \$19,000.00 held by GE Money Bank on real property located at 149 Central Blvd., Wilmington, North Carolina 28401. The debtor asserts that the judicial lien impairs her exemption of \$10,000.00 in her residence. The debtor owns one-half of the property jointly with a non-debtor. She asserts that the fair market value of the property is no greater than \$76,989.00. Bank of America holds a first deed of trust on the property with a payoff balance of \$38,651.00 as of the filing date.

Only one-half of the mortgage debt is allocable to this debtor in determining whether the judgment lien impairs the exemption that she claims in her residence as a joint tenant with a non-debtor. In re Miller, 229 F.3d 183, 186 (3d. Cir. 2002). Once half of the mortgage debt and the \$10,000.00 exemption are subtracted from one-half of the purported fair market value of the property, \$9,169.00 remains in equity. After subtracting the amount of equity from the judicial lien, only \$9,831.00 can be avoided.

Based on the foregoing, the court grants in part the motion to avoid the lien, finding that only \$9,831.00 of the judicial lien is avoided.

So Ordered.

DATED: December 29, 2005



J. Rich Leonard
United States Bankruptcy Judge